

**REMARKS**

**A. Allowance of Claim 7**

Applicants once again wish to thank the Examiner for indicating that the subject matter of claim 7 would be allowable if rewritten in independent form.

**B. The Section 103 Rejections**

Claims 1-6 and 8-37 were once again rejected under 35 U.S.C. §103(a) as being unpatentable over Levandovsky et al., U.S. Patent Publication No. 2002/0063915 (“Levandovsky”) in view of an article by Banerjee et al. (“Banerjee”).

Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Initially, Applicants note the Examiner’s comments on page 2 of the Office Action with respect to “attacking references individually where the rejections are based on combinations of references”. In reply, the Applicants note the following.

Each of the claims of the present invention requires: (a) the assignment of one or more wavelengths to a path based on wavelength performance data; or (b) the establishment of a connection based on such data; or (c) the selection of a path based on such data; or (d) the maintenance of performance data. As indicated by the Examiner, Levandovsky does not disclose the claimed assignment of wavelengths; nor does Levandovsky disclose or suggest features (b)-(d).

To overcome these deficiencies the Examiner must find at least one other reference that discloses or suggests these features. Said another way, if the secondary reference(s) the Examiner relies upon do not disclose or suggest the features missing from Levandovsky, then Applicants are correct in stating that the Examiner's combination of references do not disclose or suggest the claimed inventions. This is the position the Applicants took in their earlier response; it is the position the Applicants respectfully reiterate hereafter.

In the most recent Office Action, to make up for the deficiencies of Levandovsky the Examiner relies on Banerjee. However, instead of disclosing or suggesting the (i) assignment of wavelengths (ii) to a path based on (iii) wavelength performance data, Banerjee assigns *a particular number* of wavelengths to a network based on the number of nodes in an entire network. That is, Banerjee is not concerned with the assignment a specific wavelength to a specific path as in the claims of the present invention. Instead, Banerjee appears to only be concerned with selecting the number of wavelengths (e.g., minimum number) that can be assigned to an entire network. In addition, there does not appear to be any disclosure or suggestion within Banerjee that its assignments are based on wavelength performance data, as in the claims of the present invention.

Further, there does not appear to be any disclosure or suggestion in Banerjee of the establishment of a connection path, the selection of such a path based on wavelength performance data, or the maintenance of performance data, as in the claims of the present invention.

**C. Further Comments Regarding Claims 2,4,9, 10-17 and 33-36**

Claims 2, 4, 9, 10-17 and 33-36 each include one or more features that involve wavelength assignment applied to a “regenerator section of [a] path”. For example, claim 2 selects “a wavelength from said wavelength performance database based on connectivity data for said regenerator section available from a topology database”. In contrast, neither Levandovsky nor Banerjee, taken separately or in combination, discloses or suggests the assignment of wavelengths to regenerator sections of a path.

In sum, Applicants respectfully submit that the claims of the present invention would not have been obvious to one of ordinary skill in the art at the time the present application was filed based on a reading of the disclosures in Levandovsky, taken separately or in combination with Banerjee, because such a combination does not disclose or suggest the assignment of wavelengths to a path or to regenerator sections of a path, the establishment of a connection, the selection of a path nor the maintenance of wavelength performance data, as in the claims of the present invention.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 1-6 and 8-37.

**D. Entry of Request for Reconsideration After Final Rejection**

Entry of this Request for Reconsideration (“Request”) is solicited because the Request: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issues regarding further

without canceling the corresponding number of finally rejected claims; and (d) places the application in better form for appeal, if an appeal is necessary.

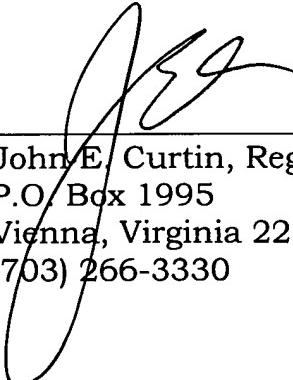
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

  
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